

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 17, 2017

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal Stepney, Deputy Director
Office of Water

Docket No.: 2015-1532-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 290, Public Drinking Water
Revised Total Coliform Rule Plus (RTCR Plus)
Rule Project No. 2015-035-290-OW

Background and reason(s) for the rulemaking:

Under 40 Code of Federal Regulations (CFR) §142.10 and §142.12, the Texas Commission on Environmental Quality (TCEQ) must adopt rules at least as stringent as the federal rules to maintain primacy over the Public Water System Supervision Program in Texas. The federal Revised Total Coliform Rule (RTCR) was promulgated by the United States Environmental Protection Agency (EPA) on February 13, 2013. The RTCR increases public health protection through the reduction of potential pathways of entry for fecal contamination into the distribution system of public water systems (PWSs). This adopted rulemaking will amend existing state rules in 30 Texas Administrative Code Chapter 290 for consistency with the RTCR, align current state rules with federal regulations, and clarify and streamline additional existing state rules.

Scope of the rulemaking:

The adopted rulemaking revises §§290.38, 290.42, 290.46, 290.47, 290.102 - 290.104, 290.106 - 290.119, 290.121, 290.122, 290.272, and 290.275, to provide rule language that is consistent with the RTCR, including the EPA's primacy revision crosswalk (Crosswalk). The EPA's Crosswalk details the rule requirements of the RTCR and provides a tool to compare the federal and adopted state regulations. The adopted amendments will provide consistency with other federal provisions, address the EPA's comments on TCEQ's adopted Ground Water Rule (GWR) revisions, and provide clarification for existing state rules.

A.) Summary of what the rulemaking will do:

This adopted rulemaking will amend Chapter 290 for consistency with the RTCR and address the EPA's comments on the GWR.

Additionally, the adopted rulemaking will align current state rules to provide consistency and updates for other federal provisions including:

- Lead and Copper Rule (LCR);
- Total Organic Carbon (TOC) Rule;
- Public Notice (PN) Rule requirements;
- disinfection and analytical requirements for chlorine dioxide and chlorite; and
- other federal monitoring and reporting requirements concerning TOC and submission of laboratory analyses and reports to the executive director.

Re: Docket No. 2015-1532-RUL

The adopted rulemaking will amend Chapter 290 to provide clarification and streamline existing state rules including:

- disinfection treatment and monitoring requirements for PWSs that utilize a groundwater source;
- PWS ownership reporting requirements;
- boil water notice (BWN) reporting and requirements for special precautions, protective measures, BWNs, and special investigation requirements for elevated turbidity levels and for failure to provide compliance data;
- nitrite monitoring requirements;
- disinfection operating reports;
- continuous turbidity monitoring and reporting requirements; and
- well recordkeeping requirements.

B.) Scope required by federal regulations or state statutes:

RTCR

TCEQ is adopting amendments to Chapter 290 to provide rule language that is consistent with the RTCR, including the EPA's Crosswalk. The EPA's Crosswalk details the federal rule requirements of the RTCR and provides a tool to compare the federal and adopted state regulations.

The following provisions are being adopted to be consistent with the RTCR.

- Add definitions in accordance with 40 CFR §141.2.
- Specify requirements concerning the maximum contaminant level (MCL) for *Escherichia coli* (*E. coli*) and identify the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* in accordance with 40 CFR §141.63.
- Update monitoring, reporting, and recordkeeping requirements concerning the *E. coli* MCL and treatment technique violations, approved seasonal system start-up procedures, microbial sampling, and assessments in accordance with 40 CFR §141.405(b)(4) and §141.861(b).
- Establish that the executive director cannot grant variances and exemptions from the MCL for *E. coli* and treatment technique requirements in accordance with 40 CFR §141.4.
- Specify the coliform sampling requirements and clarify the MCL goals (*E. coli*) for microbiological contaminants in accordance with 40 CFR §141.52 and §141.853.
- Update the PN requirements to include the form, manner, and frequency of notice in accordance with 40 CFR Part 141, Subpart Q.
- Establish and clarify that all PWSs will be required to measure residual disinfectant concentrations within their distribution system in accordance with existing residual disinfectant monitoring requirements in addition to measuring residual disinfectant concentrations at the same time and place that their monthly total coliform samples are collected in accordance with 40 CFR §141.74(c)(3)(i) and §141.132.
- Establish treatment technique violations, associated corrective actions, compliance determinations, and that PWSs are required to ensure that Level 1 and 2 assessments are conducted to identify the possible presence of sanitary defects

Re: Docket No. 2015-1532-RUL

and defects in distribution system coliform monitoring practices in accordance with 40 CFR §141.859.

- Clarify and include the updated federal analytical methods which specify that PWSs are required to conduct total coliform and *E. coli* analyses in accordance with the analytical methods or alternative methods in accordance with 40 CFR §141.21 and §141.852.
- Specify that PWSs are required to include repeat in addition to routine microbial monitoring locations in a Sample Siting Plan which shall be included with the PWS's overall monitoring plan. Require PWSs to identify a monthly microbial monitoring schedule and all groundwater sources in the Sample Siting Plan and if these sources are planned for use as repeat microbial monitoring locations in accordance with 40 CFR §141.853.
- Revise the Consumer Confidence Report (CCR) requirements and update the appendices to include new definitions, violations, health effects language, *E. coli* analytical data, and assessment criteria in accordance with 40 CFR Part 141, Subpart O.

GWR

The EPA conducted a primacy review of the TCEQ's adopted GWR revisions, and on March 10, 2014, the EPA provided comments outlining additional revisions needed. TCEQ is adopting the revisions to Chapter 290 to be consistent with the GWR in response to these comments.

The following provisions are being adopted to be consistent with the GWR.

- Add and update definitions in accordance with 40 CFR §§141.2, 141.400, and 141.402.
- Include the phrase "or other fecal indicator" when referring to *E. coli* to address virus removal required for 4-log treatment in accordance with 40 CFR §141.402 and §141.403.
- Establish and clarify the raw source sampling requirements in the event of an *E. coli* detection at the groundwater source which allows the executive director to either require PWSs to collect an additional five source samples in the event of an *E. coli* detection at the source or to conduct corrective action activities to address the *E. coli* detection in accordance with 40 CFR §141.402 and §141.403.
- Establish that the executive director may approve alternative raw sampling locations at a groundwater source if the sampling location is representative of the water quality of that well source in accordance with 40 CFR §141.402.
- Establish the PN requirements associated with assessment source monitoring for microbial contaminants in accordance with 40 CFR §141.402.
- Clarify the GWR applicability for PWSs in accordance with 40 CFR §141.400.
- Establish and clarify the required corrective actions in the event of an *E. coli*-positive source sample or the identification of a significant deficiency; clarify additional corrective actions required by the executive director; clarify that corrective action is required for triggered source monitoring and deficiencies, but not for assessment source monitoring or portions of a distribution system which is served by a surface water source; clarify corrective action applicability and PN

Re: Docket No. 2015-1532-RUL

requirements concerning corrective action to address contamination at groundwater sources when significant deficiencies are identified; clarify and address the utilization of membrane filtration for virus removal; clarify that the discontinuation of 4-log treatment must be made by written request to the executive director; and clarify the notification process in the event a significant deficiency is identified in accordance with 40 CFR §141.403.

C.) Updates to state regulations to be consistent with federal regulations:

LCR

- Establish and clarify the sampling frequency requirements for water quality parameters (WQPs); and clarify that PWSs are required to collect two tap samples for applicable WQPs during each monitoring period from each required number of monitoring sites in accordance with 40 CFR §141.87.
- The adopted rulemaking will clarify the requirements for public education materials to provide consistency with 40 CFR §141.85 and corrects a typographical error in §290.117(i)(4)(B)(i) - (iii) concerning reduced nine-year tap sampling requirements to provide consistency with 40 CFR §141.86.
- The adopted rulemaking will establish and provide clarification for PWSs with pre-existing state-approved waivers establishing that the waivers are no longer valid to provide consistency with 40 CFR §141.86 under the Lead and Copper Rule Minor Revisions (LCRMR). The amendment specifies that the PWSs that were granted pre-existing waivers are eligible for the reduced nine-year tap water waiver if the system meets the criteria outlined in the LCRMR, and that PWSs are required to re-apply for the waiver every nine years.

TOC

- The adopted rulemaking will clarify how the TOC running annual average is calculated for quarterly drinking water compliance calculations to provide consistency with 40 CFR §141.135(c)(1)(i) - (v).

PN

- The adopted rulemaking will clarify and characterize the three PN tiers which take into account the seriousness of the violation or situation and any potential adverse health effects that may be involved and provides the definition of each tier and specific PN requirements for each of the three tiers for which the violation or situation applies to provide consistency with 40 CFR §141.201 and §141.202.

Chlorine Dioxide and Chlorite Analytical Requirement

- The adopted rulemaking will revise the current analytical requirements to add the EPA approved methods for the analysis of chlorine dioxide and chlorite to provide consistency with 40 CFR §141.131.

Sample Analyses Reporting

- The adopted rulemaking will revise and add language in §§290.102, 290.106 - 290.109, and 290.113 - 290.115 to clarify the reporting requirements for PWSs

Re: Docket No. 2015-1532-RUL

concerning the submission of laboratory analyses and reports to the executive director to provide consistency with 40 CFR §141.31.

D.) Additional staff recommendations that are not required by federal rule or state statute:

Disinfection

- The adopted rulemaking will clarify the association between Chapter 290, Subchapters D and F disinfection treatment and monitoring requirements for PWSs that use a groundwater source.

Change of Ownership

- The adopted rulemaking will clarify the reporting requirements for PWSs which require the new owner of a PWS to provide notification to the executive director when a change in ownership occurs. Additionally, the reference to Chapter 291 has been removed which relates to the notification requirements by utilities.

BWN

- The adopted rulemaking will clarify the BWN delivery requirements to cross-reference Chapter 290's Subchapters D and F methods regarding PNs. The adopted rulemaking will also establish requirements to rescind a BWN, revises mandatory BWN language, and add mandatory language to rescind a BWN. The adopted rulemaking will also establish and specify discretionary actions required by the executive director concerning special precautions, protective measures, and BWNs. The adopted rulemaking will establish requirements by the executive director concerning special precautions, protective measures, BWNs, and special investigations regarding elevated turbidity levels at surface water and groundwater under the influence of surface water treatment systems and for failure by a PWS to submit certain compliance data for these treatment systems to the executive director.

Nitrate/Nitrite Monitoring

- The adopted rulemaking will correct a typographical error in §290.106(c)(3) regarding the initial monitoring frequency for inorganic compounds except asbestos.

Nitrite Monitoring

- The adopted rulemaking will clarify the monitoring requirements for nitrite in accordance with the term "Compliance cycle" as described in §290.103(3) and §290.106(c)(7)(A). In addition, the adopted rulemaking will require all PWSs to monitor for inorganic chemicals at the time designated by the executive director during each compliance period during each nine-year compliance cycle.

Disinfection Level Quarterly Operating Report (DLQOR)

- The adopted rulemaking will clarify the PN requirements for PWSs that use groundwater or purchased water sources and that violate the treatment technique requirements for residual disinfectant levels. The adopted amendments will clarify

Re: Docket No. 2015-1532-RUL

that PWSs that use groundwater sources are required to issue a PN for failing to maintain minimum residual disinfectant levels.

Continuous Turbidity Monitoring

- The adopted rulemaking will clarify the required measurement span that the turbidity equipment is required to capture for continuous turbidity monitoring and clarifies that capping the turbidity equipment is a violation. The adopted rulemaking will establish conditions when the executive director requires PWSs to conduct special precautions, protective measures, BWNs, and special investigations regarding elevated turbidity levels at surface water and groundwater under the influence of surface water treatment systems and for failure by a PWS to submit compliance data to the executive director for these treatment systems.

LCR

- The adopted rulemaking will include additional WQPs in §290.117(e) which are based on EPA's March 2016 *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document. The additional WQPs provide information to PWSs and the TCEQ to enhance the use of industry standard techniques for determining the potential corrosivity of different types of water.

Well Recordkeeping

- The adopted rulemaking will amend §290.46(n)(3) to clarify the record keeping requirements for PWSs concerning well completion data as required by §290.41(c)(3)(A).

Statutory authority:

These amendments are adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §300f to §300j-26; and THSC, §341.0315, which requires PWSs to comply with commission rules adopted to ensure the supply of safe drinking water.

Effect on the:

A.) Regulated community:

RTCR and GWR

- The adopted rulemaking to implement federal requirements will affect all PWSs in Texas but does not create a group of affected persons who were not affected previously. The costs to perform these requirements are difficult to estimate and would vary due to the difference and variability in size, type, and configuration of each PWS.

LCR

Re: Docket No. 2015-1532-RUL

- The adopted rulemaking will affect all community and nontransient, noncommunity PWSs in Texas but does not create a group of affected persons who were not affected previously. This rulemaking will require PWSs to collect two tap samples for applicable WQPs during each monitoring period from each required number of monitoring sites based on population. These requirements are not expected to result in a significant fiscal impact for the agency or PWSs. Additionally, the adopted rulemaking will require PWSs to sample for WQPs more frequently and will require PWSs to sample for additional WQPs which are based on EPA's March 2016 *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document to assist PWSs in further assessing the corrosivity of the water within their distribution system. These requirements are not expected to result in a significant fiscal impact for the agency but are expected to result in a moderate fiscal impact for PWSs.

BWN

- The adopted rulemaking to implement additional staff recommendations will affect all PWSs in Texas but does not create a group of affected persons who were not affected previously. This rulemaking further establishes and clarifies the circumstances that may require PWSs to issue BWNs to customers at the discretion of the executive director. PWSs will also be required to provide boil water rescind notices to customers. These requirements are not expected to result in a significant fiscal impact for the agency or PWSs.

B.) Public:

RTCR

- The impact of the adopted rulemaking upon the public is anticipated to be minimal. These cost savings may be offset by potential cost increases if PWSs are required to conduct infrastructure improvements based on assessments and associated corrective actions required under the RTCR. The additional federal requirements are not anticipated to significantly increase overall costs to the public.

PN

- The impact of the adopted rulemaking upon the public is anticipated to be minimal. The adopted rulemaking will provide an improved mechanism for PWSs to delivery compliance information to customers and would allow community PWSs to include certain Tier 3 PNs in the PWSs annual CCR. The adopted rulemaking may provide a decrease in the number of certain types of PNs issued to customers due to PWSs having more flexibility in PN delivery methods. The adopted rulemaking may provide a potential cost savings to the public and is not anticipated to significantly increase overall costs to the public.

Re: Docket No. 2015-1532-RUL

LCR

- The impact of the adopted rulemaking upon the public is anticipated to be minimal. The adopted rulemaking will require PWSs to collect additional tap samples for applicable WQPs and would provide PWSs improved data to assist them in further assessing the corrosivity of their water within their distribution system. The additional federal requirements are not anticipated to significantly increase overall costs to the public. The adopted rulemaking will require PWSs to sample for WQPs more frequently and will require PWSs to sample for additional WQPs which are based on EPA's March 2016 *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document to assist them in further assessing the corrosivity of the water within their distribution system. The additional state requirements are not anticipated to significantly increase overall costs to the public.

BWN

- The impact of the adopted rulemaking upon the public is anticipated to be minimal. The adopted rulemaking would provide clear and consistent notification to the public when PWSs are under a BWN. The adopted rulemaking is not anticipated to significantly increase overall costs to the public.

DLQOR

- The impact of the adopted rulemaking upon the public is anticipated to be minimal. The adopted rulemaking will allow the public to be more informed about the quality of their drinking water. The adopted rulemaking is not anticipated to significantly increase overall costs to the public.

C.) Agency programs:

RTCR

- The impact of the adopted rulemaking will require the commission to modify and enhance its compliance programs to implement the RTCR provisions which includes managing data migrations of approximately 30,000 microbiological sample results per month, including daily interaction with laboratories for quality assurance and control evaluations; making daily compliance determinations and tracking microbiological sample results for all PWSs; performing compliance determinations for Sample Siting Plans submitted by all PWSs which may include review of Standard Operating Procedures for microbial sample collection processes; performing qualitative evaluations of Level 1 and Level 2 assessments; tracking of sanitary defects identified during the assessments and any associated corrective actions; conducting subsequent compliance determination reviews and enforcement tracking activities for assessments; ensuring compliance with RTCR-related public notice requirements; providing specialized technical assistance and advanced technical training that may include conducting on-site visits to assist PWSs conducting assessments; reviewing, approving, and monitoring the specific requirements concerning start-up procedures for seasonal PWSs which are required to conduct these activities prior to serving water to the public; providing technical assistance and training to seasonal systems who receive treatment

Re: Docket No. 2015-1532-RUL

technique violations for failure to conduct seasonal start-up procedures; providing technical and regulatory assistance on a daily basis to all PWSs; developing and providing compliance assistance outreach training for PWSs and operations staff; reviewing sample analysis and sampling locations; and reviewing monthly operating reports to ensure compliance with the additional regulatory requirements. This will also require additional time to document findings and complete written reports and address the potential subsequent increase in associated enforcement actions and complaints. Implementation of the RTCR will involve the administration and coordination of compliance and enforcement activities between the commission's central office and statewide regional offices as well as with the EPA, which will also include quarterly reporting of all applicable compliance data to the EPA. The commission would be affected by the requirement for inspections, data entry, and correspondence to the regulated community. The commission will conduct enhanced investigations of community distribution systems on a discretionary basis in addition to the currently required Comprehensive Compliance Investigations conducted at PWSs once every three years during which the investigators will review the RTCR Sample Siting Plan to ensure that it is representative of the PWS.

GWR

- The impact of the adopted rulemaking will affect the commission due to EPA's additional emphasis on the identification of significant deficiencies in PWSs distribution system. This impact is anticipated to be minimal, but would require additional compliance monitoring activities by the commission regarding corrective action schedules and would result in a minimal increase in the commission's enforcement caseloads. The impact of the adopted rulemaking will require the commission to conduct additional compliance monitoring activities associated with the GWR raw source sampling requirements; however, any impact is anticipated to be minimal.

LCR

- The impact of the adopted rulemaking will require the commission to conduct additional compliance monitoring activities associated with the LCR WQPs sampling requirements; however, any impact is anticipated to be minimal.

DLQOR

- The impact of the adopted rulemaking will require the commission to conduct additional compliance monitoring activities associated with PNs; however, any impact is anticipated to be minimal.

Stakeholder meetings:

The commission has provided training and outreach efforts for stakeholders concerning the RTCR requirements at 17 events including the 2014, 2015, and 2016 Public Drinking Water Conference, 2015 and 2016 RTCR PWS Training Workshops, and the 2013 - 2016 Drinking Water Advisory Work Group (DWAAG) meetings. The commission in partnership with the Texas Section American Water Works Association, Texas Rural Water

Re: Docket No. 2015-1532-RUL

Association, Texas Water Utilities Association, and Red River Authority of Texas has provided RTCR training and outreach efforts to stakeholders during 2015 - 2016 sponsored events. The commission also provided RTCR training and outreach efforts to stakeholders during the 2016 TCEQ Environmental Trade Fair and Conference. The commission also provided a rule package overview and follow-up discussion forum with stakeholders concerning the RTCR rule requirements, staff-initiated rule revisions, and state RTCR assessment forms during the October 25, 2016 DWA WG meeting in Austin. The commission has also provided guidance and assistance to PWSs as well as conducted pilot studies with them concerning the assessment forms and has used PWS assessor feedback in the development of the assessment forms.

In addition, the commission is scheduled to provide future RTCR training and outreach efforts to stakeholders during the RTCR rulemaking and implementation process.

As a result of these training events, the commission has received generally positive feedback from stakeholders concerning the RTCR and other federal and state provisions. The commission has gained valuable insight and recommendations concerning methods and processes to streamline and provide consistency with the implementation of the RTCR and other federal and state provisions. The commission has developed program documents to assist PWSs in obtaining compliance with the RTCR requirements and has made revisions to these documents based on stakeholder input and recommendations.

Public comment:

The commission held a public hearing on November 7, 2016.

The comment period closed on November 22, 2016. The commission received written comments from Aqua Texas Incorporated (ATI), the City of Austin (COA), the City of Corpus Christi (COCC), the City of Dallas (COD), the City of Houston (COH), San Antonio Water System (SAWS), South Central Membrane Association (SCMA), Steve Walden Consulting (SWC), Texas Rural Water Association (TRWA), and the EPA. Most comments received were neither in support of nor against the rulemaking, but rather suggested changes to the proposed rule language.

Significant changes from proposal:

The commission made revisions to the proposed rule package based on the comments received from the stakeholders including the EPA. The commission removed the requirement for water quality parameter sampling of raw water based on the comments received from ATI, COA, COCC, COD, COH, SAWS, SCMA and TRWA. The commission made revisions to the BWN language based on comments received by ATI, COA, COCC, COD, COH, SAWS, SCMA, and TRWA to clarify the executive director's discretionary authority in requiring a PWS to issue a BWN, and the implementation of protective measures and special precautions. The commission made numerous revisions to the RTCR portion of the rule based on comments made by ATI, COA, COH, SAWS, and the EPA to ensure the adopted rule language is consistent with the federal regulations.

Re: Docket No. 2015-1532-RUL

Potential controversial concerns and legislative interest:

RTCR

- The RTCR adds corrective action and treatment technique requirements for PWSs, requiring PWSs or a third party approved by the executive director to conduct assessments in response to coliform monitoring triggers. Although the state forms for RTCR assessments are not part of the rule amendments, they are supplemental documents which are required to support RTCR compliance provisions. Stakeholders commented that the draft state assessment forms are outside of the scope of the federal requirements and are anticipated to involve additional costs as well as time commitments by PWSs. Stakeholders have requested additional input in the development of the assessment forms.

Well Recordkeeping Requirements

- Stakeholders requested a "grandfathering" date of September 13, 2000, for the requirement to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the PWS until the facility is decommissioned, and copies of related TCEQ approval letters. The request is based primarily on anticipated costs to create the required documentation. This request is outside the scope of this rule package since no changes were proposed to the requirement to maintain as-built plans and drawings. Additionally, adequate records are required for protective operation and management of PWSs, so a "grandfather clause" is not an option for this section of the regulations.

BWN

- The adopted rulemaking further establishes circumstances that may require PWSs to issue BWNs to customers at the discretion of the executive director. PWSs will also be required to provide boil water rescind notices to customers.

Special Precautions, Protective Measures, and BWNs

- The adopted rulemaking will allow the executive director to initiate a special investigation after a PWS fails to submit surface water treatment or groundwater under the influence of surface water treatment compliance data to the commission and will require the PWS to issue a BWN to customers under specific conditions.

Does this rulemaking affect any current policies or require development of new policies?

The impact of the adopted rulemaking will require the commission to modify and enhance compliance programs and policies to implement the RTCR provisions and staff recommendations. The commission will be required to revise their inspection procedures, data entry, correspondence, and enforcement policies to implement the RTCR provisions and staff recommendations.

Re: Docket No. 2015-1532-RUL

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The EPA could directly implement the RTCR and GWR provisions. This option will prevent the agency from obtaining primary enforcement authority for these rules which could also impact federal funding for administering the state drinking water program.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** October 7, 2016

Anticipated *Texas Register* adoption publication date: March 24, 2017

Anticipated effective date: March 30, 2017

Six-month *Texas Register* filing deadline: April 7, 2017

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Attachments

Federal Register, EPA 40 CFR Parts 141 and 142 - Volume 78 No. 30, National Primary Drinking Water Regulations: Revisions to the Total Coliform Rule (pages 10270 - 10365)

Federal Register, EPA 40 CFR Parts 141 and 142 - Volume 79 No. 38, National Primary Drinking Water Regulations: Minor Corrections to the Revisions to the Total Coliform Rule (pages 10665 - 10670 and 10752 - 10754)

cc: Chief Clerk, 2 copies
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